MGN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.52 OF 2007

Commissioner of Customs (Preventive)..Appellant

Vs.

M/s.Shreenath Dyechem Industries & Ors..Respondents

Mrs. N.V.Masurkar with Mr. S.D. Bhosale for the Appellant

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 20th September,2007

P.C.:

. The CESTAT by the impugned order has remitted the matter to the Commissioner for fresh decision in accordance with law further permitting cross examination of the persons as set out in the order.

2. The Revenue relied on two documents, one a Memorandum of M/s.Halpem & Woolf and the other the Report of M/s.Zaiwalla & Co. in the matter is what is known as Letap Fraud Investigation. The Tribunal found that the persons alleged to have prepared/submitted those documents were not made available for cross examination and yet the said document was allowed. On behalf of the Appellants learned Counsel contends that in fact cross

examination was permitted and to that extent refers to the observation in internal page 80 of the order passed by the Commissioner. We have perused the order with the assistance of the learned Counsel for the Appellant. It was Shri Sheshadri who testified to the genuiness of those documents. It was not the case of Shri Sheshadri that he was a party to the preparation of the documents prepared by M/s.Halpem & Woolf and/or M/s.Zaiwalla & Co. It is in these circumstances that the learned Tribunal proceeded on the footing that the respondents herein must have an opportunity to cross examine the maker/those who have submitted the documents, as these would be the documents which are not public documents.

3. Considering the above in our opinion we cannot fault the finding recorded by the Tribunal. Considering the above the question of law as framed would not arise. Hence Appeal dismissed.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**